

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

Ken B. Peterson, Commissioner,  
Department of Labor and Industry,  
Complainant,

v.  
Vintage Racing Archives, LLC,  
Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION  
UPON DEFAULT**

This matter came on before Administrative Law Judge (ALJ) Manuel J. Cervantes for a Prehearing Conference on June 12, 2012 at the Office of Administrative Hearings in St. Paul, Minnesota. The prehearing conference was held pursuant to a Notice and Order for Prehearing Conference, dated May 21, 2012.

Jackson Evans, Assistant Attorney General, appeared on behalf of the Department of Labor and Industry (Department). There was no appearance by or on behalf of Vintage Racing Archives (Respondent).

On January 11, 2012, a Summons and Notice to Respondent and a Complaint were served upon Respondent. Respondent and Complainant reached a Settlement Agreement, and Complainant agreed to waive the requirement for an Answer provided that Respondent return a fully executed copy of the Settlement Agreement. Respondent did not return the Settlement Agreement. Complainant instructed Respondent that it must file an Answer and informed Respondent of the consequences of not filing an Answer. Respondent did not file an Answer to the Complaint.

The Department filed a Complainant's Memorandum of Law in Support of its Motion for Default on May 21, 2012. The Respondent did not file or serve any written response to the Motion. The record in this matter closed on June 12, 2012, upon the lapse of the period for Respondent's response.

**STATEMENT OF THE ISSUES**

1. Whether judgment should be entered against Respondent for failing to answer;
2. Whether the cited standards, contained in Citation 1 (Items 1-8) and Citation 2 (Items 1-2), applied to the conditions at Respondent's worksite;
3. Whether Respondent violated the cited standards;

4. Whether Respondent knew or should have known of the existence of the hazards created by the violations;

5. Whether Respondent's employees had access to the hazards created by the violations;

6. Whether the abatement dates/periods were reasonable;

7. Whether the items of the citation were properly classified;

8. Whether the penalties were appropriately calculated, pursuant to Minn. Stat. § 182.666.

The ALJ concludes that Respondent is in default and recommends that the Default Judgment be **GRANTED**. The ALJ further recommends that the allegations in the Notice and Order for Prehearing Conference be accepted as true and deemed proven. Finally, the ALJ concludes there is a factual basis for the Commissioner of Labor and Industry (Commissioner) to impose penalties for the violations alleged in Citation 1, Items 1-8, and Citation 2, Items 1-2, and it is recommended that the penalties be imposed.

Based on the records, file, and the proceedings, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On January 11, 2012, a Summons, Notice to Respondent, and Complaint were served upon Respondent Vintage Racing Archives, LLC. by U.S. mail to its last known business address in Stillwater, MN.

2 The Summons and Notice to Respondent, in relevant part, states:

YOU ARE HEREBY SUMMONED and required to serve upon the Commissioner, Department of Labor and Industry, Legal Services Division, 443 Lafayette Road, St. Paul, Minnesota 55155, an Answer to the attached Complaint within twenty (20) days after service of this Summons upon you, exclusive of the day of service.... Failure to file an Answer may constitute a waiver of your right to further participation in these proceedings.

3. More than twenty days from date of service of the Summons and Notice to Respondent elapsed and Respondent has not filed an answer to the Complaint.

4. The Complaint alleges that:

A. Respondent is an employer as defined by Minn. Stat. § 182.651, subd. 7 (2010). Respondent at all times hereinafter mentioned had a place of

employment at 11661 Myeron Road, Stillwater, Minnesota where it engaged in the business of automotive restoration.

- B. On August 10, 2011 -- September 5, 2011, Complainant conducted an occupational safety and health inspection of Respondent's place of employment in accordance with Minn. Stat. § 182.659. Complainant found that Respondent was in violation of Minn. Stat. § 182.653, subd. 3.
- C. On September 29, 2011, Complainant issued to Respondent by certified mail the Citations and Notifications of Penalty.
- D. On October 17, 2011, a representative of the Complainant received Respondent's notice of contest. In its notice of contest, Respondent contested the portions of the Citations and Notifications of Penalty set out below:

	Citation	Type of Violation	Abatement Date	Proposed Penalty
Citation 1, Items 1-8	Contested	Contested	Contested	Contested
Citation 2, Items 1 and 2	Contested	Contested	Contested	Contested

5. Respondent failed to file an Answer and failed to appear at the prehearing conference. Therefore, the allegations contained in the Complaint are deemed proved and are incorporated into these Findings by reference.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The ALJ and the Department have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 182.661, subd. 3, 182.664, and Minn. R. 5210.0570.

2. Respondent received due, proper, and timely notice of the charges against it, of its opportunity to respond to the Motion, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant legal and procedural requirements.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and issues set forth in the Summons and Complaint or other pleading are taken as true and deemed proved without further evidence.

5. The Respondent is in default because it failed to file an answer to the Complaint and failed to appear at the scheduled prehearing conference, without the ALJ's prior consent.

6. The imposition of the assessed penalties against Respondent is in the public interest.

Based on the Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

**IT IS RECOMMENDED** that Respondent's contested citations and notification of penalty be **AFFIRMED** and that default judgment be **GRANTED** in favor of the Department.

DATED: June 26, 2012

/s/ Manuel J. Cervantes  
MANUEL J. CERVANTES  
Administrative Law Judge

Reported: Default

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kathleen Hagen, Executive Secretary, Occupational Safety & Health Review Board, 443 Lafayette Road North, St. Paul, Minnesota 55155 or call the Department at (651) 284-5294 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.